

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 30, 2016

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2016-1907-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 336, Radioactive Substance Rules  
Schedule of Cost Recovery Fees for Subchapter H Licenses  
Rule Project No. 2017-003-336-WS

**Background and reason(s) for the rulemaking:**

Title 30 Texas Administrative Code §336.103(c) requires a holder of a license for a low-level radioactive waste disposal site issued under Chapter 336, Subchapter H, to pay an annual license fee for the services received from the Texas Commission on Environmental Quality (TCEQ or commission). The rulemaking would remove the word "quarterly" to allow flexibility for the Radioactive Materials Division and the Financial Administration Division to invoice cost recoverable activities by TCEQ on an as needed basis.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

This rulemaking will remove the word "quarterly" from §336.103(c) where it requires the executive director to invoice for the amount of the recoverable costs incurred quarterly.

**B.) Scope required by federal regulations or state statutes:**

None.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**Statutory authority:**

The rule is proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of

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radiation from the licensing requirements provided by the TRCA. The rule is proposed as authorized by Texas Water Code (TWC) §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

**Effect on the:**

**A.) Regulated community:**

A revised invoice schedule would be less burdensome on licensees. Additionally, since license amendment actions have decreased in frequency, the necessity for reporting cost recoverable activities on a quarterly basis has dissipated.

**B.) Public:**

No impact is expected with a revised invoice schedule.

**C.) Agency programs:**

A revised invoice schedule would provide a more streamlined administrative process because TCEQ would only be invoicing once per year. Annual invoicing requires less administrative resources for the Radioactive Materials Division and the Office of Compliance and Enforcement's Critical Infrastructure Division. Annual invoicing is also warranted considering that the licensee is approaching five years in operation so more information is now known about variability in the total amount of activities subject to cost recovery.

**Stakeholder meetings:**

There are no stakeholder meetings planned for this rulemaking project; however, a rule public hearing will be held during the comment period on February 27, 2017, in Austin.

**Potential controversial concerns and legislative interest:**

No controversial concerns or legislative interest have been identified.

**Will this rulemaking affect any current policies or require development of new policies?**

The executive director will no longer be required to submit a quarterly invoice for the annual license fee.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The alternative would be to not change the rule and conduct quarterly invoicing, however, quarterly invoicing is not as efficient as annual invoicing.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** January 18, 2017

**Anticipated *Texas Register* publication date:** February 3, 2017

**Anticipated public hearing date (if any):** February 27, 2017

**Anticipated public comment period:** February 3, 2017 – March 6, 2017

**Anticipated adoption date:** May 10, 2017

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**Attachments:**

None.

cc: Chief Clerk, 2 copies  
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